

SENATE BILL REPORT

SB 6366

As of January 30, 2018

Title: An act relating to providing coroners with additional subpoena duces tecum authority.

Brief Description: Providing coroners with additional subpoena duces tecum authority.

Sponsors: Senators Padden, Liias and Pedersen.

Brief History:

Committee Activity: Law & Justice: 1/30/18.

Brief Summary of Bill

- Authorizes a coroner to request the superior court to issue a subpoena to produce records during a death investigation.
- Requires subpoenas to comply with court Civil Rule 45.
- Authorizes contempt of court for failure to obey a subpoena without an adequate excuse.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Melissa Burke-Cain (786-7755)

Background: Coroners and medical examiners have the same legal authority, duties, and responsibilities. Coroners take jurisdiction over human remains and conduct death scene investigations if the cause and manner of death appears suspicious or is unknown. In larger counties, the legislative authority appoints the medical examiner who has forensic pathology training. Smaller counties elect their coroner. Coroners administer the county coroner's office and arrange for forensic pathology services when needed.

Laboratory tests, autopsies, and information about the deceased, assist the coroner's determination of the cause and manner of death. Coroners may hold an inquest if the coroner suspects that a person's death was unnatural, violent, or resulted from unlawful means. The purpose of an inquest is to determine the cause of death, but not who may have caused the death. Under current law, coroners are authorized to receive the deceased person's medical records. Coroners may issue subpoenas for witnesses to attend and provide documentary

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evidence at an inquest. An inquest jury hears evidence and renders a verdict on the cause of death.

Civil Rule 45 (CR 45) is a court rule governing court orders in a civil case, called subpoenas, that require a person to provide documentary evidence or testimony under oath at a particular place and time. CR 45 explains the court's authority to require a response, sets notice requirements, explains the duty to obey the court's order, and the court's authority to hold the person in contempt of court for non-compliance with the order.

Summary of Bill: Coroners may request the superior court to issue a subpoena to produce documents during an on-going or active death investigation. The subpoena must comply with Court Rule 45's requirements. The subpoena requires a person to produce documents, records, and tangible things for inspection and copying at a specific time and place. The court may issue a records subpoena together with a subpoena to appear for testimony. Any person who fails to comply with the subpoena without an adequate excuse is subject to contempt of court.

Appropriation: None.

Fiscal Note: Requested on January 29, 2018.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony: PRO: Coroners have full access to medical records during medico-legal death investigations. Medical records are helpful when the death is natural and the cause must be determined. Coroner's decisions must be supported by evidence and are subject to judicial review. The coroners also must notify next of kin. It is becoming more difficult to identify next of kin without access to more information about the deceased. Although there is subpoena power during an inquest, it is expensive to conduct an inquest just to obtain records and documents. This bill would save resources and avoid having to hold an inquest in order to invoke the current inquest subpoena power. The prosecutors support this bill. The bill parameters avoid potential for abuse because the proposed subpoena duces tecum power would only be available in an active or ongoing investigation. Additionally, the subpoena has a judge's eyes on it to prevent abuse of the process. This is a good policy at minimal cost. Subpoena power in this bill would be an additional tool that a coroner could use to do the job more effectively. Whether or not to hold an inquest still remains a discretionary decision of the coroner in a particular case.

OTHER: We need to help coroners make a full investigation, especially in cases where a person dies in a facility under suspicious circumstances. In my experience, it was difficult to get a pathology investigation done. For persons dying in care facilities under suspicious circumstances, facility staff information and records should be obtained. I am glad this topic is being considered.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Warren McLeod, Washington Association of Coroners and Medical Examiners; Monty Cobb, Washington

Association of County Officials.

OTHER: Michael Brunson, citizen.

Persons Signed In To Testify But Not Testifying: No one.